

receive from a trade or business of buying and selling products produced or made by others; for example, a grain broker.

(ii) Your activities to protect an investment in a currently operating business or activities that are too irregular, occasional, or minor to be considered as having a bearing on the income you receive, such as—

(A) Hiring an agent, manager, or other employee to operate the business;

(B) Signing contracts where your signature is required, so long as the major contract negotiations were handled by others in running the business for you;

(C) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for you;

(D) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(E) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(4) In figuring your net earnings or net loss from self-employment, we count all net income or net loss even though:

(i) You did not perform personal services in carrying on the trade or business;

(ii) The net profit was less than \$400;

(iii) The net profit was in excess of the maximum amount creditable to your earnings record; or

(iv) The net profit was not reportable for social security tax purposes.

(5) Your net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal Revenue Code). Net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. You cannot deduct, from wages or net earnings from self-employment, expenses in connection with the production of income excluded from gross income under paragraph (b)(2)(ii) of this section.

(c) *Wages*. Wages include the gross amount of your wages rather than the net amount paid after deductions by your employer for items such as taxes and insurance. Wages are defined in subpart K of this part, except that we also include the following types of wages that are excluded in subpart K:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Wages of less than the amount stipulated in section § 404.1057 that you receive in a calendar year for domestic service in the private home of your employer, or service not in the course of your employer's trade or business;

(3) Payments for agricultural labor excluded under § 404.1055;

(4) Remuneration, cash and non-cash, for service as a home worker even though the cash remuneration you received is less than the amount stipulated in § 404.1058(a) in a calendar year;

(5) Services performed outside the United States in the Armed Forces of the United States.

(d) *Presumptions concerning wages*. For purposes of this section, when reports received by us show that you received wages (as defined in paragraph (c) of this section) during a taxable year, it is presumed that they were paid to you for services rendered in that year unless you present evidence to our satisfaction that the wages were paid for services you rendered in another taxable year. If a report of wages shows your wages for a calendar year, your taxable year is presumed to be a calendar year for purposes of this section unless you present evidence to our satisfaction that your taxable year is not a calendar year.

[70 FR 28812, May 19, 2005]

**§ 404.430 Monthly and annual exempt amounts defined; excess earnings defined.**

(a) *Monthly and annual exempt amounts*. (1) The earnings test monthly and annual exempt amounts are the amounts of wages and self-employment income which you, as a Social Security beneficiary, may earn in any month or year without part or all of your monthly benefit being deducted because of excess earnings. The monthly exempt

## Social Security Administration

## § 404.434

amount, (which is  $\frac{1}{12}$  of the annual exempt amount), applies only in a beneficiary's grace year or years. (See § 404.435(a) and (b)). The annual exempt amount applies to the earnings of each non-grace taxable year prior to the year of full retirement age, as defined in § 404.409(a). A larger "annual" exempt amount applies to the total earnings of the months in the taxable year that precedes the month in which you attain full retirement age. The full annual exempt amount applies to the earnings of these pre-full retirement age months, even though they are earned in less than a year. For beneficiaries using a fiscal year as a taxable year, the exempt amounts applicable at the end of the fiscal year apply.

(2) We determine the monthly exempt amounts for each year by a method that depends on the type of exempt amount. In each case, the exempt amount so determined must be greater than or equal to the corresponding exempt amount in effect for months in the taxable year in which the exempt amount determination is being made.

(i) To calculate the lower exempt amount (the one applicable before the calendar year of attaining full retire-

ment age) for any year after 1994, we multiply \$670 (the lower exempt amount for 1994) by the ratio of the national average wage index for the second prior year to that index for 1992. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10 (*i.e.*, if the amount ends in \$5 or more, we round up, otherwise we round down). The annual exempt amount is then 12 times the rounded monthly exempt amount.

(ii) The higher exempt amount (the one applicable in months of the year of attaining full retirement age (as defined in section 404.409(a)) that precede such attainment) was set by legislation (Public Law 104-121) for years 1996-2002. To calculate the higher exempt amount for any year after 2002, we multiply \$2,500 (the higher exempt amount for 2002) by the ratio of the national average wage index for the second prior year to that index for 2000. We round the result as described in paragraph (a)(2)(i) of this section for the lower exempt amount.

(iii) The following are the annual and monthly exempt amounts for taxable years 2000 through 2005.

Year	For years through taxable year preceding year of reaching full retirement age		Months of taxable year prior to month of full of retirement age	
	Reduction: \$1 for every \$2 over the exempt amount		Reduction: \$1 for every \$3 over the exempt amount	
	Annual	Monthly	Annual	Monthly
2000 .....	\$10,080	\$840	\$17,000	\$1,417
2001 .....	10,680	890	25,000	2,084
2002 .....	11,280	940	30,000	2,500
2003 .....	11,520	960	30,720	2,560
2004 .....	11,640	970	31,080	2,590
2005 .....	12,000	1,000	31,800	2,650

(b) *Method of determining excess earnings for years after December 1999.* If you have not yet reached your year of full retirement age, your excess earnings for a taxable year are 50 percent of your earnings (as described in § 404.429) that are above the exempt amount. After December 31, 1999, in the taxable year in which you will reach full retirement age (as defined in § 404.409(a)), the annual (and monthly, if applicable) earnings limit applies to the earnings of the months prior to the month in which you reach full retirement age.

Excess earnings are 33  $\frac{1}{3}$  percent of the earnings above the annual exempt amount. Your earnings after reaching the month of full retirement age are not subject to the earnings test.

[70 FR 28813, May 19, 2005]

### § 404.434 Excess earnings; method of charging.

(a) *Months charged.* If you have not yet reached your year of full retirement age, and if your estimated earnings for a year result in estimated excess earnings (as described in § 404.430),